

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF GEORGIA  
AUGUSTA DIVISION

FILED  
U.S. DISTRICT COURT  
AUGUSTA DIV.

2014 SEP -4 PM 2:52

CLERK *J. Z. Hurd*  
SO. DIST. OF GA.

UNITED STATES OF AMERICA

vs.

ANTONIO SMILEY

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CR 312-003

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O R D E R

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In the captioned criminal matter, Defendant Antonio Smiley has filed a motion to reduce sentence under Federal Rule of Criminal Procedure 35(b) because of his substantial assistance in the prosecution of others.

Rule 35(b) allows sentence reductions but only upon motion of the government. The decision to file a motion for downward departure lies within the sound discretion of the government. United States v. Alvarez, 115 F.3d 839, 841 (11<sup>th</sup> Cir. 1997). A federal district court may review the government's refusal to file a Rule 35(b) motion only if the defendant first makes a "substantial threshold showing" that the refusal was based upon an unconstitutional motive, such as race or religion. Wade v. United States, 504 U.S. 181, 185-87 (1992). In the absence of this showing, a defendant has no right to discovery or an evidentiary hearing on the matter. Id. at 186. In the instant case, Defendant has made no such showing.

In the absence of a Rule 35(b) motion by the Government or a substantial showing that the Government acted with unconstitutional motive in its failure to file a Rule 35(b) motion, the Court has no authority to reduce Defendant's sentence. Accordingly, his present motion (doc. no. 794) is **DENIED.**

**ORDER ENTERED** at Augusta, Georgia, this 4<sup>th</sup> day of September, 2014.

  
UNITED STATES DISTRICT JUDGE